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CLARKS FORK WILD AND SCENIC RIVER DESIGNATION ACT OF 1990

OCTOBER 19 (legislative day, OCTOBER 2), 1990.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 2343]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2343) to amend the Wild and Scenic Rivers Act by designating a segment of the Clarks Fork River in the State of Wyoming as a component of the National Wild and Scenic Rivers System, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Clarks Fork Wild and Scenic Rivers Designation Act of 1990".

SEC. 2. DESIGNATION OF RIVER.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a), as amended, is further amended by adding at the end the following:

"( ) CLARKS FORK, WYOMING.—(A) The twenty and five-tenths-mile segment from the west boundary of section 3, township 56 north, range 106 west at the Crandall Creek Bridge downstream to the north boundary of section 13, township 56 north, range 104 west at Clarks Fork Canyon; to be administered by the Secretary of Agriculture as a wild river. Notwithstanding subsection (b), the boundary of the segment shall include all land within four hundred and forty yards from the ordinary high water mark on both sides of the river. No land or interest in land may be acquired with respect to the segment without the consent of the owner thereof. For the purposes of carrying out this paragraph, there is authorized to be appropriated $500,000 for development and $750,000 for the acquisition of land and interests therein.

"(B) Designation of a segment of the Clarks Fork by this paragraph as a component of the Wild and Scenic Rivers System shall not be utilized in any Federal proceeding, whether concerning a license, permit, right-of-way, or any other Federal

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action, as a reason or basis to prohibit the development or operation of any water impoundment, diversion facility, or hydroelectric power and transmission facility located entirely downstream from the segment of the river designated by this paragraph. Congress finds that development of water impoundments, diversion facilities, and hydroelectric power and transmission facilities located entirely downstream from the segment of the river is not incompatible with its designation as a component of the Wild and Scenic Rivers System.

"(C) The Secretary of Agriculture is directed to apply for the quantification of the water right reserved by the inclusion of a portion of the Clarks Fork in the Wild and Scenic Rivers System in accordance with the procedural requirements of the laws of the State of Wyoming: *Provided,* That, notwithstanding any provision of the laws of the State of Wyoming otherwise applicable to the granting and exercise of water rights, the purposes for which the Clarks Fork is designated, as set forth in this Act and this paragraph, are declared to be beneficial uses and the priority date of such right shall be the date of enactment of this paragraph.

"(D) The comprehensive management plan developed under subsection (d) for the segment designated by this paragraph shall provide for all such mesures as may be necessary in the control of fire, insects, and diseases to fully protect the values for which the segement is designated as a wild river.".

Purpose of the Measure

The purpose of S. 2343, as ordered reported, is to amend the Wild and Scenic Rivers Act by designating a 20.5 mile segment of the Clarks Fork River in the State of Wyoming as a component of the National Wild and Scenic Rivers System.

Background and Need

The Clarks Fork River was designated for study as a potential addition to the Wild and Scenic Rivers System in 1975. The Forest Service completed its study of the river in 1979 and recommended that 21.5 miles of the Clarks Fork be included in the National Wild and Scenic Rivers System. That segment was also recommended for wild and scenic designation in the Forest Plan for the Shoshone National Forest, which was completed in February of 1986.

The Clarks Fork River originates in the Beartooth Mountains, north of Cooke City, Montana. Named after William Clark of the Lewis and Clark Expedition, it is a major tributary of the Yellowstone River, which is in the Missouri River Basin. The river flows from Montana into Wyoming, carving a deep, narrow canyon. In the upper stretch, the river gradient is particularly steep for a short distance, resulting in several waterfalls, cascades, and rapids, most of which are impassable by boat or raft. The middle portion of the river cuts deeply into granite, with walls towering up to 1,200 feet vertically from the water's edge. The river drops very quickly throughout this segment, forming several rapids, plunge pools, and waterfalls. In the lower reach, the river character changes dramatically. The canyon opens up into a wide glacial valley with walls up to 4,000 feet above the river. A combination of granite and overlying sedimentary rock provides for a very interesting and scenic geological display. There are a few rapids, but generally the river gradient is nearly flat in this section.

While traditional forms of water-based recreation, such as floating and fishing are limited by rugged access, the Clarks Fork does provide many opportunities for viewing scenery and enjoying unique and unusual water-related environments. In addition, the Middle and Lower Canyons have historical value. In 1887, Chief Joseph and the Nez Perce Indians eluded the U.S. Cavalry in a

1,300 mile chase from Oregon to Montana. By slipping through a narrow chasm and out of the mouth to the Clarks Fork Canyon, the Nez Perce escaped by a route believed to be impassable, thus avoiding a cavalry detachment waiting for them on the plains to the east.

S. 2343 would add a 20.5 mile segment of the Clarks Fork River in Wyoming to the Wild and Scenic Rivers System as a "wild" river.

Legislative History

S. 2343 was introduced by Senator Wallop and Senator Simpson on March 27, 1990. The Subcommittee on Public Lands, National Parks and Forests held a hearing on S. 2343 on May 10, 1990.

At the business meeting on October 11, 1990, the Senate Committee on Energy and Natural Resources ordered S. 2343, as amended, favorably reported.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on October 11, 1990, by a unanimous vote of a quorum present, recommends that the Senate pass S. 2343 if amended, as described herein.

The roll call vote on reporting the measure was 18 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Bradley*	
Mr. Bingaman*	
Mr. Wirth	
Mr. Conrad	
Mr. Heflin*	
Mr. Rockefeller*	
Mr. Akaka	
Mr. McClure	
Mr. Domenici*	
Mr. Wallop	
Mr. Murkowski	
Mr. Nickles*	
Mr. Burns	
Mr. Garn*	
Mr. McConnell	

*Indicates voted by proxy

Committee Amendments

During the Committee's consideration of S. 2343, the Committee adopted an amendment in the nature of a substitute. In addition to making several technical and conforming changes, the Committee reported bill makes major revisions in the language in the bill as introduced relating to Federal reserved water rights.

As introduced, S. 2343 wold have directed the Secretary of Agriculture and the governor of Wyoming to agree on the amount of water to be reserved for the purposes of the wild and scenic river. During the 3-year period when such an agreement was being formulated (add in perpetuity thereafter if there is never an agreement reached) the bill reserved 50 percent of the river's monthly natural flow. As introduced, S. 2343 included several other specific provisions related to the perfecting and quantification of the Federal reserved right.

Rather than adopt this approach, the Committee agreed to report the bill with language similar to that approved in the 99th Congress for the Cache La Poudre River in Colorado. The provisions of the bill, as reported, are explained in the Section-by-Section Analysis portion of this report.

Section-by-Section Analysis

Section 1 provides for the short title of the Act to be the "Clarks Fork Wild and Scenic River Designation Act of 1990."

Section 2 amends section 3(a) of the Wild and Scenic Rivers Act by adding a new paragraph for the designation of the Clarks Fork River as an addition to the Wild and Scenic Rivers System.

New subparagraph (A) describes the 20.5 mile segment of the clarks Fork to be administered by the Secretary of Agriculture as a wild river. The boundary of the River corridor is established as 440 yards on either side of the river, consistent with the ¼ mile corridor established in the Wild and Scenic Rivers Act. Acquisition within the river corridor is limited to only those lands which may be acquired with the consent of the owner. $500,000 is authorized for development within the river corridor and an additional $750,000 for the acquisition of land and interests therein.

Subparagraph (B) provides that designation of the Clarks Fork as a component of the Wild and Scenic Rivers System is not to be used to as a reason to prohibit the development of water resource-related projects which are located entirely downstream from the boundary of the river segment. The subparagraph also includes a congressional finding that such development downstream from the designated segment is not incompatible with wild and scenic river designation. Without these provisions, section 7(a) of the Wild and Scenic Rivers Act could preclude such a development in the future.

Subparagraph (C) provides that the reservation of water resulting from the designation of the Clarks Fork as a component of the Wild and Scenic Rivers System is to be quantified in accordance with appropriate procedural requirements of Wyoming law, and shall have a priority date as of the date of enactment of this paragraph. The subparagraph also preempts Wyoming law to the extent necessary to establish the purposes for the designation of the Clarks Fork as beneficial uses under State law to permit the State to quantify the right.

Subparagraph (D) relates to the preparation of a management plan for the river segment and is self-explanatory.

Cost and Budgetary Considerations

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2343. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2343, as reported.

Executive Communications

The pertinent legislative report received by the Committee from the Department of Agriculture setting forth executive agency recommendations relating to S. 2343 is set forth below:

On April 30, 1990, the Committee on Energy and Natural Resources requested a legislative report from the Office of Management and Budget setting forth executive views on S. 2343. This report had not been received at the time the report on S. 2343 was filed. When the report becomes available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate.

Statement of James C. Overbay, Deputy Chief, Forest Service, U.S. Department of Agriculture

Mr. Chairman and members of the subcommittee, thank you for the opportunity to offer our views on S. 2343, the "Clarks Fork Wild and Scenic River Designation Act of 1990" and H.R. 2809, regarding the transfer of the Calaveras Bigtree National Forest to the State of California.

S. 2343, regarding the Clarks Fork River

The Clarks Fork of the Yellowtone River has been under consideration for Wild and Scenic River designation for over 10 years. A congressionally authorized study was completed in 1979. In 1982, President Reagan recommended to Congress that a segment of the Clarks Fork be included in the National Wild and Scenic Rivers System. A bill was introduced but not enacted. No further action was taken by the Congress until S. 2343 was introduced. The Shoshone National Forest Land and Resource Management Plan also recommends the Clarks Fork for designation.

The Clarks Fork has many unique and remarkable values. The scenery is outstanding, including cascades, wa-

terfalls, and magnificent canyon walls. It offers a unique recreational experience because of its relatively undisturbed state and its opportunities for solitude. It has historic significance as part of the route followed by Chief Joseph and the Nez Perce Indians when they attempted to escape to Canada in 1877. The river is named after William Clark of the Lewis and Clark Expedition.

Our recommendation to Congress in 1982 was to designate 21.5 miles. S. 2343 would delete one-half mile from the lower end of the segment and .2 of a mile from the upper end. The segment that would be designated is 20.8 miles.

A reservior is being considered at the mouth of the canyon and, if constructed, it would back water up into the lower canyon. Deleting the lower one-half mile would allow for the reservior construction while not affecting the designation upstream. We believe this is a reasonable compromise. If the reservoir is not constructed, the one-half mile segment could be reconsidered for designation at some future time.

We believe that the existing land acquisition authorities of the Wild and Scenic Rivers Act would adequately protect uses of private property within the Clarks Fork river corridor. Furthermore, under existing law, condemnation authority would be available only for acquiring access or scenic easements. S. 2343 would eliminate this authority. While we have not used condemnation to enforce the provisions of the Wild and Scenic Rivers Act in over 10 years, we believe such authority should be retained to be used when negotiations fail and river values are seriously jeopardized—and always as a last resort. Without such authority, the Secretary cannot assure the protection of the river values. For this reason, we recommend that the Committee not make an exception to the existing land acquisition authorites already in the Wild and Scenic River Act.

We are unclear regarding the intent and the effect of paragraph (B), and recommend that it be deleted from the bill. From our reading, it appears that a specific Federal reserved water right would be established under paragraph (B) to protect the values of the river. The quantity of water reserved would be determined through an agreement between the Secretary and the Governor of Wyoming. The Secretary and the Governor would have 3 years within which to reach agreement. In the interim, the quantity of the reserved water would be 50 percent of the monthly natural flow.

Reaching an agreement on this issue may be difficult and time consuming. Three years is a realistic time frame from data collection an analysis. Conceivably, however, additional time could be required to negotiate an agreement. More importantly, it is unclear as to what happens if an agreement cannot be reached within the 3 year period, or at all. Would the "50-percent" provision be followed until an agreemnt was reached? What incentive would there be

for the Governor to agree to that amount of water which the Secretary believes is the amount necessary to protect the river values, especially if the studies determine that an amount significantly larger than 50 percent is necessary? Mr. Chairman, we believe the current language inadvertently provides fertile grounds for prolonged disagreement regarding the quantity of water that should be reserved.

The Wild and Scenic Rivers Act requires the Secretary to develop a river management plan for each designated river. In doing so, we would consult with the State, other agencies, and interest groups. The plan would explore alternative management scenarios, and analyze the effects of each reasonable alternative. In the case of the Clarks Fork, it is conceivable that different alternatives would necessitate different amounts of reserved water. Section 13 of the Wild and Scenic Rivers Act currently provides authority for the assertion of Federal reserved water rights to protect designated rivers. Upon finalizing the management plan, the Secretary would file with the State for a reserved right to the volume of water and flow regime required to maintain the resource values of the river corridor.

The Wyoming Game and Fish Department presently has a reserved right for a minimum flow of 200 cubic feet per second for the lower 5 miles of the river below Sunlight Falls. We believe this flow level is adequate to maintain the fishery and aquatic values. Higher flows, however, are necessary to maintain the scenic values of the river—particularly the waterfalls—and to facilitate the natural flushing action of the river during spring runoff. Furthermore, any protection provided by this state law reserved right may be temporary, since it is to be reviewed by December 31, 1998, by the State to determine if it should be continued.

Further data collection and analysis will be necessary to determine what flow regime may be necessary to maintain the present high quality of water and to provide the flows needed to transport sediment and natural debris through this reach of river. This flow regime could prove to be that needed to fulfill the purposes of the Act. Our preliminary studies indicate that the 50 percent of monthly flow that would be prescribed by paragraph (B) would be inadequate as a long-term minimum flow requirement. Furthermore, the necessary flow regime may be far more complex than a simple, arbitrary percentage of average flow.

For all these reasons, we prefer to pursue whatever water rights that may prove necessary under existing State water allocation law. Accordingly, we recommend that paragraph (B) be deleted from S. 2343.

If the Committee determines that paragraph (B) contains the provisions necessary to resolve the complex questions associated with this issue, we strongly recommend that it be amended to eliminate the uncertainty regarding

what might happen in the case of delay or failure in reaching an agreement.

We recommend that paragraph (C) be deleted. Projects located entirely downstream from a designated river would not be affected by the provisions of the Wild and Scenic Rivers Act.

We are concerned that paragraph (D) as presently written would require the use of inappropriate control measures for fire, insects, and diseases. We recommend that "reasonable measures" be substituted for "all such measures" in line 23 on page 4 and that "fully" be deleted in line 24.

Mr. Chairman, the Clarks Fork of the Yellowstone is an excellent candidate for Wyoming's first designated National Wild and Scenic River. We look forward to working with the Committee and the Wyoming delegation to resolve our concerns about some aspects of S. 2343.

H.R. 2809, REGARDING THE CALAVERAS BIGTREE NATIONAL FOREST

The Calaveras Bigtree National Forest was established in 1909 to acquire and "permanently hold" specified lands in order to "prolong the existence, growth, and promote the reproduction" of giant sequoia. Two designated areas totalling 3,500 acres were authorized for acquisition. The Forest Service acquired 379 acres in 1953 through a land-for-timber exchange. The State of California has, for similar purposes, acquired several thousand acres in the area, including most of the lands authorized for the National Forest. The resulting land ownership pattern consists of a 379-acre National Forest surrounded by a much larger State park.

H.R. 2809, as passed by the House, would authorize and direct the Secretary of Agriculture to transfer lands within the Calaveras Bigtree National Forest to the State of Calfornia in exchange for lands in California and other consideration of approximately equal value. The transfer would not take place unless the Secretary and the State reached agreement on terms and conditions within 2 years of enactment.

The transfer would bring the area under the jurisdiction of a single unit of government. Our draft Land and Resource Management Plan recommends an exchange to the States. Also, a reduction of 7 miles of property boundary and 50 property corners would save about $40,000 over the next 5 years.

Mr. Chairman, we support enactment of H.R. 2809 as passed by the House, and we are actively working with the State of California to identify suitable State lands and other consideration that could be exchanged for Calaveras. We expect to quickly reach agreement if H.R. 2809 is enacted.

This concludes my testimony. I would be pleased to answer any questions you may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 2343, as ordered reported, are shown as follows (existing law proposed to the omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

WILD AND SCENIC RIVERS ACT

AN ACT To provide a National Wild and Scenic Rivers System, and for otehr purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Wild and Scenic Rivers Act".

* * * * * * *

SEC. 3. (a) The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

* * * * * * *

( ) CLARKS FORK, WYOMING.—(A) The twenty and five-tenths-mile segment from the west boundary of section 3, township 56 north, range 106 west at the Crandall Creek Bridge downstream to the north boundary of section 13, township 56 north, range 104 west at Clarks Fork Canyon; to be administered by the Secretary of Agriculture as a wild river. Notwithstanding subsection (b), the boundary of the segment shall include all land within four hundred and forty yards from the ordinary high water mark on both sides of the river. No land or interest in land may be acquired with respect to the segment without the consent of the owner thereof. For the purposes of carrying out this paragraph, there is authorized to be appropriated $500,000 for development and $750,000 for the acquisition of land and interests therein.

(B) Designation of a segment of the Clarks Fork by this paragraph as a component of the Wild and Scenic Rivers System shall not be utilized in any Federal proceeding, whether concerning a license, permit, right-of-way, or any other Federal action, as a reason or basis to prohibit the development or operation of any water impoundment, diversion facility, or hydroelectric power and transmission facility located entirely downstream from the segment of the river designated by this paragraph. Congress finds that development of water impoundments, diversion facilities, and hydroelectric power and transmission facilities located entirely downstream from the segment of the river is not incompatible with its designation as a component of the Wild and Scenic Rivers System.

(C) The Secretary of Agriculture is directed to apply for the quantification of the water right reserved by the inclusion of a portion of the Clarks Fork in the Wild and Scenic Rivers System in accordance with the procedural requirements of the laws of the State of

Wyoming: Provided, That, notwithstanding any provision of the laws of the State of Wyoming otherwise applicable to the granting and exercise of water rights, the purposes for which the Clarks Fork is designated, as set forth in this Act and this paragraph, are declared to be beneficial uses and the priority date of such right shall be the date of enactment of this paragraph.

(D) The comprehensive management plan developed under subsection (d) for the segment designated by this paragraph shall provide for all such measures as may be necessary in the control of fire, insects, and diseases to fully protect the values for which the segment is designated as a wild river.

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